



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/166784

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed June 22, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to Medical Assistance, a hearing was held on August 18, 2015, at Sheboygan, Wisconsin.

The issue for determination is whether the Sheboygan County Department of Human Services (the agency) correctly determined that the Petitioner was overpaid BadgerCare+ benefits between July 1, 2014 and April 30, 2015.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Becky Burdick, Economic Support Supervisor  
Sheboygan County Department of Human Services  
3620 Wilgus Ave.  
Sheboygan, WI 53081

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. On May 11, 2015, the agency sent the Petitioner an automated Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice, claim # [REDACTED], advising the

Petitioner that he was overpaid benefits in the amount of \$1,858.04, for the period of July 1, 2014 through April 30, 2015. No overpayment worksheet was attached to this notice. (Exhibit 9)

3. On June 29, 2015, the agency sent the Petitioner a manual Wisconsin Medicaid and BadgerCare Plus Overpayment Notices, again advising the Petitioner that he was overpaid benefits in the amount of \$1,858.04 for the period July 1, 2014 through April 30, 2015. This notice did not include a worksheet. (Exhibit 10)
4. Because of the peculiarities of a particular computer program, an overpayment worksheet was not generated. (Testimony of Ms. Burdick)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 22, 2015. (Exhibit 1)

### **DISCUSSION**

“Each client has the right to adequate and timely notice of adverse action.” *Income Maintenance Manual (IMM)* §§ 3.2.1 and 3.2.2

“Notify the member or the member’s representative of the period of ineligibility, the reason for his/her ineligibility, the amounts incorrectly paid, and request arrangement of repayment within a specified period of time.” *BadgerCare+ Eligibility Handbook (BEH)* §28.5

The notices that were sent to the Petitioner did not contain overpayment worksheets, showing how Petitioner’s income was calculated, nor how the overpayment was calculated. The Seventh Circuit Court of Appeals held that the demands of Procedural Due Process require that recipients of public assistance be given adequate notice of adverse action. *Dilda v. Quern*, 612 F. 2d 1055 (7<sup>th</sup> Cir. 1980). The Court of Appeals in *Dilda v. Quern*, found that a State Agency had violated the due process of rights of public assistance recipients, because the notice advising them of the reduction or cancellation of their benefits failed to provide the recipient with a detailed notice showing the breakdown of income and allowable deductions. *Dilda v. Quern*, 612 F. 2d 1055 (7<sup>th</sup> Cir. 1980) The standard set forth by the Court of Appeals most certainly applies to overpayments, as well.

Because the agency did not provide an overpayment worksheet, its determination cannot be upheld at this time. I note also, that the agency did not provide any documentation such as applications, renewals, or case comments to establish what the Petitioner did and did not report to the agency, nor did the agency provide any documentation showing that the Petitioner was adequately advised of what his reporting requirements were.

### **CONCLUSIONS OF LAW**

The agency has not met its burden to prove it correctly determined that the Petitioner was overpaid BadgerCare+ benefits between July 1, 2014 and April 30, 2015.

**THEREFORE, it is**

### **ORDERED**

That the agency rescind overpayment claim # [REDACTED], indicating an overpayment of \$1,858.04, for the period of July 1, 2014 and April 30, 2015.

The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 22nd day of October, 2015

---

\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 22, 2015.

Sheboygan County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability